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Court : Kolkata

Decided On : Mar-14-1919

Reported in : 52Ind.Cas.71

Judge : Richardson and ;Syed Shamsul Huda, JJ.

Appellant : Ramesh Chandra Acharjee Chowdhury

Respondent : EasIn Sarkar and ors.

Judgement :

Shamsul Huda, J.

1. The appeal arises out of a suit for accounts instituted by the plaintiff, who is the part proprietor of certain properties, against the defendant who was his Tahsildar. In addition to the ordinary claim for an account of receipts and disbursements there was a claim for damages on the allegation that the defendant had fraudulently and in collusion with the tenants allowed large sums of money to be barred by limitation. The allegation in the plaint was traversed in the written statement. There was a preliminary decree for account against the defendant. A Commissioner was appointed to examine the accounts and finally the matter came up before the Munsif, who decreed the suit in part and included in that decree a sum of Rs. 217-5-0, on the ground that this amount was not realised from the tenants on account of the default of the defendant and became barred.

2. The lower Appellate Court has set aside the decree of the Munsif so far as this amount is concerned. The sums which were allowed to be barred were payable by the tenants as rent for the years 1313, 1314 and 1315 and those sums could only have been barred if not realised respectively in 1316, 1317 and 1318. The lower Appellate Court gives two reasons for disallowing the plaintiff's claim in respect of these sums. In the first place, the learned Subordinate Judge says that as the claim for account for the period up to 1315 was disallowed, the plaintiff could not claim anything in respect of that period. It seems to me that the fact that these sums accrued due during a previous period makes no difference whatever. The cause of action in respect of these sums arose when they became barred by the law of limitation, and as already pointed out, all those sums were barred during the period for which the defendant has been made liable to render accounts to the plaintiff. The second ground of the Subordinate Judge's judgment seems equally untenable. The learned Judge observes with reference to the argument that the defendant by reason of his negligence failed to realise these sums during 1316 to 1318: 'There was no contract or custom in support of the plaintiff's contention. The defendant was not hence liable for the omission 'The defendant was a paid servant of the plaintiff. Whether he had or had not the power to institute suits himself, it was certainly his duty to take steps in proper time to give information to the plaintiff that unless suits were brought those sums would become barred. This, as found by the trial Court, he omitted to do. He was legally bound to take all the precautions which an ordinary prudent man of business would take in managing affairs of his own. This clearly he has not done and it seems to me that he is liable for the loss that has been occasioned to the plaintiff by his own default.

3. It has, however, been urged before us that in a suit for accounts a claim for damages cannot be included. On this point we have the authority of an unreported decision of this Court in Second Appeal No. 98 of 1917. That decision is exactly in point and I see no reason to differ from it.

4. For these reasons we decree this appeal and restore the decision of the first Court, with this modification only that the cost of the commission would be borne half and half by the plaintiff and the defendant.

5. The plaintiff is entitled to his costs in this Court and in the Court below.

Richardson, J.

6. I agree.

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